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12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14 (HON. JEFFREY T. MILLER)
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17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 vs.

20 SERGIO ANGEL DIAZ,

21 Defendant.
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) Case No. 08 CR 0611

)
) STATEMENT OF FACTS AND
) MEMORANDUM OF POINTS
) AND AUTHORITIES IN
) SUPPORT OF DEFENDANT'S
) MOTION TO:
) 1) COMPEL DISCOVERY; AND
) 2) LEAVE TO FILE FURTHER
) MOTIONS

) Date: April 4, 2008
) Time: 11:00 a.m.
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31 **I.**
32 **STATEMENT OF FACTS**

33 The following statement of facts is based, in part, on materials received from the government.
34 The facts alleged in these motions are subject to amplification and/or modification at the time
35 these motions are heard.

36 On February 16, 2008, Mr. Diaz and Jasmine Ayala were traveling westbound on Interstate
37 8, when they stopped at the border patrol checkpoint located 32 miles east of Calexico, California.
38 Mr. Diaz was driving a GMC Sierra truck loaded with a quad and riding equipment that were used
39 at the desert earlier that day. The truck was also pulling a travel trailer behind it. When he arrived

1 at the checkpoint he was questioned and a canine was utilized on the trailer. The canine alerted
2 to the trailer, and Mr. Diaz was asked to open the trailer. He explained that he had borrowed the
3 truck and trailer and, as such, he did not have a key to open the trailer. Agents inspected the trailer
4 and discovered 13 people inside. They were interviewed and found to be citizens of Mexico. Mr.
5 Diaz and Ms. Ayala were placed under arrest.

6 II.

7 **THE COURT SHOULD COMPEL THE GOVERNMENT TO PRODUCE** 8 **DISCOVERY**

9 Mr. Diaz makes the following discovery motion pursuant to Rule 12(b)(4) and Rule 16. This
10 request is not limited to those items that the prosecutor has actual knowledge of, but rather
11 includes all discovery listed below that is "in the possession, custody, or control of any federal
12 agency participating in the same investigation of the defendant." United States v. Bryan, 868 F.2d
13 1032, 1036 (9th Cir.), cert. denied, 493 U.S. 858 (1989).

14 (1) Mr. Diaz's Statements. The government must disclose: (1) copies of any written or
15 recorded statements made by Mr. Diaz; (2) copies of any written record containing the substance
16 of any statements made by Mr. Diaz; and (3) the substance of any statements made by Mr. Diaz
17 which the government intends to use, for any purpose, at trial. See Fed. R. Crim. P. 16(a)(1)(A).

18 (2) Mr. Diaz's Prior Record. Mr. Diaz requests disclosure of his prior record, if any exists.
19 See Fed. R. Crim. P. 16(a)(1)(B).

20 (3) Documents and Tangible Objects. Mr. Diaz requests the opportunity to inspect, copy, and
21 photograph all documents and tangible objects which are material to the defense or intended for
22 use in the government's case-in-chief or were obtained from or belong to him. See Fed. R. Crim.
23 P. 16(a)(1)(C).

24 (4) Reports of Scientific Tests or Examinations. Mr. Diaz requests the reports of all tests and
25 examinations which are material to the preparation of the defense or are intended for use by the
26 government at trial. See Fed. R. Crim. P. 16(a)(1)(D). Mr. Diaz notes that no fingerprint analyses
27 have been produced. If such analyses exist, Mr. Diaz requests a copy.

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1 (5) Expert Witnesses. Mr. Diaz requests the name and qualifications of any person that the
2 government intends to call as an expert witness. See Fed. R. Crim. P. 16(a)(1)(E). In addition,
3 Mr. Diaz requests written summaries describing the basis and reasons for the expert's opinions.
4 See id. This request specifically applies to any fingerprint and handwriting experts that the
5 government intends to call.

6 (6) Brady Material. Mr. Diaz requests all documents, statements, agents' reports, and tangible
7 evidence favorable to the defendant on the issue of guilt or punishment. See Brady v. Maryland,
8 373 U.S. 83 (1963).

9 In addition, impeachment evidence falls within the definition of evidence favorable to the
10 accused, and therefore Mr. Diaz requests disclosure of any impeachment evidence concerning any
11 of the government's potential witnesses, including prior convictions and other evidence of
12 criminal conduct. See United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427
13 U.S. 97 (1976). In addition, Mr. Diaz requests any evidence tending to show that a prospective
14 government witness: (i) is biased or prejudiced against the defendant; (ii) has a motive to falsify
15 or distort his or her testimony; (iii) is unable to perceive, remember, communicate, or tell the
16 truth; or (iv) has used narcotics or other controlled substances, or has been an alcoholic.

17 (7) Request for Preservation of Evidence. Mr. Diaz specifically requests the preservation of
18 all physical or documentary evidence that may be destroyed, lost, or otherwise put out of the
19 possession, custody, or care of the government and which relate to the arrest or the events leading
20 to the arrest in this case.

21 (8) Any Proposed 404(b) Evidence. "[U]pon request of the accused, the prosecution . . . shall
22 provide reasonable notice in advance of trial . . . of the general nature" of any evidence the
23 government proposes to introduce under Rule 404(b). Fed. R. Evid. 404(b). Mr. Diaz requests
24 such notice three weeks before trial in order to allow for adequate trial preparation.

25 (9) Witness Addresses. Mr. Diaz requests the name and last known address of each
26 prospective government witness. He also requests the name and last known address of every
27 witness to the crime or crimes charged (or any of the overt acts committed in furtherance thereof)
28 who will not be called as a government witness.

(10) Jencks Act Material. Mr. Diaz requests production in advance of trial of all material discoverable pursuant to the Jencks Act, 18 U.S.C. § 3500. Advance production will avoid needless delays at pretrial hearings and at trial. This request includes any “rough” notes taken by the agents in this case; these notes must be produced pursuant to 18 U.S.C. § 3500(e)(1). This request also includes production of transcripts of the testimony of any witness before the grand jury. See 18 U.S.C. § 3500(e)(3).

(11) Residual Request. Mr. Diaz intends by this discovery motion to invoke his rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the Constitution and laws of the United States. Mr. Diaz requests that the government provide him and his attorney with the above-requested material sufficiently in advance of trial.

III.

THE COURT SHOULD GRANT LEAVE TO FILE FURTHER MOTIONS

At the time of the filing of these motions, the government has provided some discovery to the defense. However, the defense is unable to evaluate the status of the evidence and any other further motions that may be necessitated by virtue of the discovery that will be produced. Therefore, Mr. Diaz respectfully requests the court to grant him leave to file additional motions as necessary.

IV.

CONCLUSION

For the foregoing reasons, Mr. Diaz respectfully requests that the Court grant his motions.

Respectfully submitted,

Dated: March 18, 2008

/s/ Brian J. White
BRIAN J. WHITE Attorney for
Defendant SERGIO ANGEL DIAZ